Appeal No. 39 *of* 1905-06.

Appellant	*Versus*	Respondent
Kenchegowda, son of Boregowda of Desahalli village, Mandya Taluk		Narasaiya, shanbhog

Subject.

Appeal against the order of the Deputy Commissioner of the Mysore District, rejecting the claim of the appellant to Survey No. 74 of Desahalli village in the Mandya Taluk held to belong to Government and confirming the darkhast sale thereof to the respondent.

The facts of the case appear sufficiently from the following :—

Decision.

Land No. 74 was an assessed waste. Its total extent is one acre and thirty guntas, of which thirty guntas were dealt with as kharab owing to the existence of a disused katte on the land. It would appear that one Nanjundaiya applied for the land at the time of the Survey Settlement but that the Settlement officer ordered that the katte should be inspected after the ensuing rains before granting the land for cultivation. Nanjundaiya repeated his application in 1888 but the then Amildar rejected it on the grounds that the katte still retained a small quantity of water, that the unarable portion exceeded the arable portion and that it was fit for a sandal plantation. This reservation was not, however, made under authority nor was entered in the village accounts. In November 1900, the respondent presented a darkhast for the land. As directed by the Amildar, the land was inspected and reported upon by the shekdar who after consulting the villagers, gave it as his opinion that the katte was quite out of order and scarcely retained any water for the use of men or cattle and that there was no objection to the land being granted for cultivation. The Amildar thereupon ordered the sale of the land in due course. After publicity given in the manner prescribed by law, a sale was held on 13th January 1901 at which the respondent became the purchaser. A large number of persons were present at the sale which, however, owing to the existence of pits on the land and the costly nature of the work to be done to render the land fit for cultivation, did not attract a higher bid than Rs. 2-4-0 offered by the respondent. After making a personal inspection and satisfying himself that the sale was above-board, the Amildar confirmed the sale and issued a saguvali chit on the 10th May 1901. Several months afterwards, *i.e.*, in January 1902, the appellant complained to the then Sub-Division Officer Mr. Venkat Rao, that the sale was a fraudulent transaction, that in holding it the Amildar's previous order of 1888 had been wilfully ignored, and that the katte standing on the land was his own property having been originally constructed by one of his ancestors. He further alleged that the price realized was wholly inadequate. Mr. Venkat Rao in calling for a report directed the suspension of cultivation pending orders on the appellant's protest. The Amildar in reporting upon the case expressed the opinion that the sale having been regularly held and duly given effect to, there were no grounds for any interference with it. He also stated that the appellant had made out no title either to the land or to the katte on it, and that his (appellant's) cupidity had been excited by the costly improvements which the purchaser had effected after he had obtained possession in pursuance of the sale. Mr. Venkat Rao thereupon, *i. e.*, on 16th May 1902, declined to interfere. He did not however communicate this order to the appellant who consequently again petitioned him on the subject in June following. The matter was once again referred by him to the Amildar for inspection and report. About that time there was a change of Amildars, and the new Amildar after seeing the land and holding an enquiry, reported *inter alia* that the appellant had failed to substantiate his title, that the patel's denial of all knowledge of the sale was untrustworthy, that considering the initial cost involved, the price realized could not be said to be too low, but that the sale must be pronounced irregular since the extent mentioned in the several papers concerned was one acre only while including the katte the area of the number was one acre and thirty guntas. He seemed to think, judging from the difference in area, that the katte had been excluded without the formality of a phode or sub-division. On 19th November 1902, the Sub-Division Officer (Mr. Dorasami Iyer) cancelled the grant, thus superseding the orders of his predecessor. He was of opinion that the katte was useful to the public and that the sale was brought about by a fraud practised by the respondent, who as a shanbhog could not have been unaware of the proceedings of 1888 but who nevertheless suppressed the same so as to enable his darkhast to succeed. The respondent appealed on 19th December 1902, and the then Deputy Commissioner Mr. Ramanujaiengar in calling for record directed that the Sub-Division Officer's order should be held in abeyance pending the disposal of the appeal. The record was received in January 1903 but the appeal was not heard until 24th July 1905 on which date Mr. Sparkes held that the land had been properly sold and that Mr. Dorasami Iyer's order could not be sustained. Hence this appeal.

2. Government agree with the Amildars who dealt with the case and with Mr. Sparkes in holding that the appellant has not established his title to the katte in question. The katte is a neglected pond much silted up and quite out of repair. It is evident that it is of no use whatever to the villagers or their cattle. The land was not classed as kharab at the Survey Settlement, but on the contrary it was dealt with as an assessed waste with a deduction under kharab on account of the existence of a katte on it. The direction that the land should be inspected after the rains before granting it for cultivation shows that there was no intention to

refuse the grant unless the katte filled so as to useful to the public and overflowed so as to render the land unfit for cultivation. The Amildar's order of 1888 was one of questionable propriety. That the katte then contained a small quantity of water, was not a sufficient justification for the reservation of the land, nor the fact that a good bit of the land was unarable, nor that the land was an eligible one for a sandal plantation. The Amildar exceeded his powers in directing on his own responsibility the reservation of a land which had been duly assessed to revenue by the Survey Department. That being so, there was nothing to prevent the darkhast of 1900 being entertained, investigated, and disposed of on its own merits and irrespective of what had transpired in 1888. Local inspection both by the shekdar and by the Amildar coupled with the statement of a large body of the villagers, left no room for doubt that the katte was not only not private property but was also practically useless, and that the land was one which should be disposed of under the darkhast rules. The record connected with the sale as well as the subsequent correspondence further shows that the land was far from attractive in the condition in which it stood at the time of sale, that the bid obtained was a fair one, that there was no secrecy or fraud and that there was absolutely no reason why the formal confirmation of the sale should be withheld. The difference in area was made too much of in the Amildar's report of 1902. There was no need for any sub-division. The exclusion instead of the inclusion of the phut kharab in the papers was an unimportant error which in no way effected the sale or the proceedings connected with it. Government have no hesitation in holding that the sale was rightly confirmed and given effect to by the Amildar in 1901 and that it should not have been set aside by the Sub-Division Officer in 1902.

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The case however is a very simple one and there can be but one conclusion, *viz.*, that the appellant has no valid grievance and that the Deputy Commissioner's order must be affirmed.

3. The appeal thus fails and must be rejected.

No. R. 10159-*A.*—*R. M.* 110-05, *dated Bangalore, 27th January* 1906.

Copies of the above are forwarded (1) to the Deputy Commissioner of the Mysore District, together with the records received with his letter No. 321 dated the 13th September 1905, and (2) to the Survey and Settlement Commissioner in Mysore together with the village map of Desahalli village in the Mandya Taluk, received with his No. 90, dated the 20th December 1905.

Appeal No. 45 *of* 1905-06.

Appellants		*Respondent*
1. Karegowda	*Versus*	Maregowda.
2. Chennegowda.		

Subject.

Claim to the pateli office of Jodi Handalagere village in the Kunigal Taluk.

The facts of the case appear sufficiently from the following :—

Decision.

The appellant's father Timmegowda and the respondent and one Chennegowda are the sons of one Karegowda who held the pateli in dispute until his death which took place some time before the year 1877. No successor having been formally appointed to the deceased, Timmegowda and the respondent divided the work between themselves and continued to perform the same until 1901 when the former died. Since then the respondent alone has been in sole possession of the office. He possesses in his own right a substantial share in the village besides paying a large amount of kandayam. Another individual who owns half the village is agreeable to his appointment, and so too his brother Chennegowda. The appellants on the other hand seem to be less respectable and efficient. Under these circumstances, the Deputy Commissioner has conferred the vacancy on the respondent who as already observed was in joint possession for some twenty-five years and in sole possession for two or three years. The family has not been deprived of the office which has only been given to the second son on the ground *inter alia* of his being in every way more competent and acceptable than the sons of the first son. Government consider that the arrangement made by the Deputy Commissioner is unexceptionable and ought not to be interfered with.

2. The appeal fails and is accordingly dismissed.

No. R. 10095—*R. M.* 143-05-4, *dated Bangalore, 25th January* 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Tumkur District, together with the records received with his docket No. 409, dated the 24th October 1905.